

RECEIVED

AUG 14 2009

Appeal Application for: Alber's Subdivision

Case Number #PLD2009-0016; SEP2009-00031; WET2009-00026

Board of Commissioners

This petition represents concerned residents living on a 1,200' portion of NE 189th St. Battle Ground. The *contact representative* as a petitioner of record is R. Henderson, 10507 NE 189th St., Battle Ground, WA 98604. Telephone contact numbers are 694-6564 or 905-2133 (weekdays).

Introduction: This appeal is in response to a proposed four (4) home development at the west end of NE 189th St., a dead end, public road in the Meadow Glade area of Clark County. Our neighborhood consists of 25 small homes several of which have been established since the early 1900's. We received notice of this development the beginning of May 2009 and were given an opportunity to comment regarding this development. Quite by accident we discovered the County had imposed a condition on the developer of these homes that said our dead end street would have to be extended and opened to two existing developments to the west: Meadowland Acres w/26 homes & The Jackson Homestead w/two homes and six additional lots. The homeowners of NE 189th St. were quite surprised over this condition imposed by the County. Many of us commented in writing, within the proposed time frame, expressing our concerns about the opening of NE 189th St. to that amount of additional traffic. We feel strongly that this decision by County staff undermines the preservation of our neighborhood and increases the safety hazard to those who use this narrow, substandard road. A hearing was scheduled for June 25, 2009, and many of us appeared to give testimony to the above stated concerns. When we arrived at the hearing we found it had been postponed until July 23, 2009. Because we were all assembled for the hearing, we took that opportunity to visit with Mr. Daviau, a County planner, regarding our issues about 189th street being extended and opened to through traffic from other neighborhoods. Mr. Daviau was polite but made it very clear that NE 189th street would be opened - period - and that our concerns were not valid and would not affect the outcome of their "condition" to open the road. On July 23, 2009, we attended the hearing where several of us testified and entered exhibits including photos, maps and a petition signed by 23 of the 25 homeowners, on our section of road, requesting our street be kept closed to unwarranted traffic.

A decision by Mr. Forester was issued on July 31, 2009.

Standard of Review: With regard to Mr. Forester's Decision, we assert the Standard of Review in this appeal involves a clearly erroneous application of the County code requirement defining a "standard roadway, for a rural road". We are also challenging Finding #6 Transportation Concurrence, the last paragraph, "*road dimension is only a substitute for privacy*" and "*cross-circulation would be very minor and the amount of additional traffic inconsequential*". Additionally, we are asking for a reversal of Condition A-4, Off Site Circulation, page 11 of the Final Order based on Title 40 of the Uniform Development Code 40.350.030.B.4.b(4)(a) 'Clarify Secondary Access Road Requirements'. (Summarized says, a secondary road is not required until you have 100 dwelling units. Altogether, we scarcely meet half that requirement.)

The County's error is a matter of law because the code defining a 'standard road' has not been properly applied to this section of NE 189th Street. NE 189th Street, consisting of 1,200 feet total length, is not a standard road per the code definition, and it **has been previously ruled 'sub-standard' in two (2) prior hearing decisions based on recommendations by the very**

BOCC #

2

department that now asserts it meets those standards. This is arbitrary and capricious. There have been no changes, upgrades or improvements to NE 189th Street, a public road, since either of the prior findings determining NE 189th Street to be 'substandard'. There is no evidence to support reclassification of the roadway. NE 189th Street must remain a dead end street.

Supporting Documentation

- 1) Map of Alber's Subdivision and surrounding area.
- 2) CCC 40.350.030 "Off-Site Road Improvement Requirements"
- 3) July 31, 2009, J.Richard Forester Land Use Hearing Examiner's Decision, pages 6, 7 & 11.
- 4) WSDOT Design Manual M 22-01.05, page 1140-3 which provides a description of road shoulders. (NE 189th St. is not in compliance with this standard. See attached photos.)
- 5) Clark County Unified Development Code Title 40.350.030.B.4.b(4)(a) 'Clarify Secondary Access Road Requirements' (100 dwelling units envelop.)
- 6) Jackson Homestead PLD2003-00084; dated March 18, 2004. Daniel Kearns Land Use Hearing Examiner's Decision, 'Findings' 'Road Modification' pages 10, 11 & 12. (Stating that 189th St. is substandard. This document provides good background to our current situation.)
- 7) Meadowland Acres, dated March 9, 1995, Addendum to Staff Report & Recommendation to the Hearings Examiner Campbell Kintz from Craig Greenleaf, County Planning Director. 'Off-Site Roads' 'Findings' page 7 designating our road as "substandard" and 'Analysis' page 8 regarding the Traffic Impact analysis for this subdivision and the number of trips generated. (If our road is opened, we can easily expect to have half of those "248 trips (cars) a day" on our road.)
- 8) CCC 40.350. 030 Street and Road Standards "Overview" which states "These *standards are intended to preserve the community's quality of life*". (Mr. Forester dismisses this standard as 'only a privacy argument! We believe this to be an error.)

Conclusion: The homeowners of NE 189th Street do not oppose the development of Mr. Albers' subdivision. We do, however, oppose the unnecessary opening of our dead-end street to traffic from existing developments to the West. Opening the road is not necessary to the success of the Alber's development. Other viable options are available, some of which were discussed at the time of the hearing. One option was proposed by Mr. Forester, on page 7 of his final order, but County staff has now rejected that alternative.

Submitted by


Renee Henderson 08/14/09